

Topsfield Zoning Board of Appeals

January 22, 2008

Chairman Moriarty called the meeting to order at 8:00 PM. Board members present were Bob Moriarty, Kristin Palace, Tony Penta, Lisa Stern-Taylor and Scott Dow. Roberta Knight, Community Development Coordinator was also present as well as the applicants, their representatives and interested residents. See attached attendance sheets for specific public hearings.

14 Central Street: At 8:00 PM, Chairman Moriarty called the public hearing to order to consider the application of Vernon Haug, Jr. for a finding pursuant to Article III, Section 3.05 of the Zoning By-Law for a premises located at 14 Central Street, a non-conforming lot, for the replacement of the sunroom with new roof line, double hung windows and rear entrance within the existing footprint.

Mr. Haug joined the Board to explain his project with a model display demonstrating the replacement of the existing sunroom and roofline with double hung windows and new rear entrance within the existing footprint. He has also obtained approvals from the Conservation Commission, Board of Health and Historical Commission. Chairman Bob Moriarty made the motion to approve the application for a finding pursuant to Article III, Section 3.05 of the Zoning By-Law; seconded by Kristin Palace; so voted 5-0.

59 Main Street: At 8:15PM, Chairman Moriarty call the public hearing to order to consider the application of Edmond LeClair for premises located at 59 Main Street requesting (1.) a special permit pursuant to Article V, Section 5.04 and Article III, Table of Use Regulations Section 1, Residential, Sub-section 1.3 Multi-Family Dwelling to convert premises to a multi-family dwelling consisting of three (3) townhouses; (2.) a finding pursuant to Article III, Section 3.05 of the Zoning By-Law relative to the reconfiguration of the footprint and demolition of existing structure; and (3.) site plan review pursuant to Article IX of the Zoning Bylaw.

Mr. Eric Botterman of Millennium Engineering represented the applicant Edmond LeClair before the Board and noted that the intent was to demolish the present structure and replace the building with three townhouses on a squared off footprint with essentially the same square footage. Six parking spaces would be located over the septic system that has been designed to allow above ground parking. The current septic system provides sufficient capacity for the five bedroom project since it was designed to handle the most current use as a medical office and two apartments. The project would require an Amended Order of Conditions from the Conservation Commission for the grading and house construction.

At this time, Chairman Moriarty read a memo from the Planning Board concerning a possible town easement for an ancient way through the property. Planning Board Chair Martha Morrison noted that the Planning Board has been concerned with parking and

traffic in the area and wanted to bring this issue before the Zoning Board concerning a possible use of the easement for a footpath from adjacent Town property (the old School Street Highway Garage). As the discussion moved forward, and the Board reviewed the documents and map for 59, 57 and 55 Main Street, it became evident that there was no recorded documents substantiating the existence of an easement at 59 Main Street. What has been documented by the survey according to the Engineer is that there is a right of way to the right of the lot line between 59 and 57 to allow access through 57 Main to the back lot at 55 Main Street, both lots owned by Jim Kehoe.

The Board members then discussed the issue concerning the new configuration of the footprint, which as shown on the current plan is different from the one, presented at the November preliminary meeting. It was the consensus of the Board that the current configuration increased the non-conformity of the building by extending the building along the non-conforming side setback. Further, the members agreed that a variance to the side setback would be required. The same issue also exists for the front set back. Engineer Eric _____ countered that in his view there was not an increase in the non-conformity since the current side set back remained the same along the proposed footprint. The Board members disagreed with this interpretation.

At this time, abutters Jim Kehoe, Dick Thompson, Brian Woodland, Brent Roeder and Foti Qirjazi noted their respective approvals for the proposed project.

Chairman Moriarty queried the Board members. Member Kristin Palace stated that in her opinion a variance would be required for the project.

Chairman Moriarty noted that a variance could be justified due to the shape and topography of the lot. These restraints have determined the location of the septic system, which in turn, would drive the location of the building to the left side of the lot.

Member Lisa Taylor made the motion to amend the application to allow for a variance pursuant to Article IV, Section 4.02, Table of Dimensional And Density Regulations, for front and side set back requirements; seconded by Kristin Palace; so voted 5-0.

Chairman Moriarty then made the motion to continue the hearing to February 26, 2008; seconded by Scott Dow; so voted 5-0.

4 North Common Street: At 9:05 PM, Chairman Moriarty called the public hearing to order to consider the application of Frank and Kristi Martino for premises, known as "The Commons", located at 4 North Common Street requesting a special permit pursuant to Article V, Section 5.04 and Article III, Table of Use Regulations Section 2. Community Facilities, Sub-section 2.16 Conference and Event Facility for said facility located in the Central Residential District.

Chairman Moriarty noted that the property was well known to the Board. The Board's 2000 decision concerning this property was adjudicated under summary judgment in

Land Court over a year ago; however, the Court has rendered no decision. The Chairman followed by reading the minutes of the November 28, 2006 public hearing concerning the applicant's request for a special permit for a Conference & Event Facility. At that time, the Board made no decision and requested a parking plan.

Attorney James Meehan of Grenier Associates representing the applicants Frank and Kristi Martino referred to the License Agreement with the Congregational Church that allows the use of the Church parking lot for guest parking related to events held at 4 North Commons Street. The Church parking lot consists of 56 paved spaces and 20 non-paved spaces within Emerson Field. Under the Agreement, The Commons may utilize 50 paved parking spaces and 10 non-paved spaces.

The Board members reviewed the terms of the lease, and raised concerns relative to the terms of the agreement. It was the consensus of the Board members that the agreement was inadequate to meet the Zoning Bylaw's parking requirements for the special permit use as a function facility. The lease agreement was deficient in that the lease presented in the application was for only a six-month term (new current lease is for one year according to Mr. Martino); the agreement can become null and void at the Church's discretion if the terms of the agreement are violated; the Church can cancel the agreement with thirty days written notice; parking is unavailable for dates listed in agreement; the agreement is unclear as to time conflicts with the other users of the parking lot (Gould Barn and TTA athletic events at Emerson Field); the enforceability of the agreement is questionable.

Attorney Meehan responded that the applicant is currently operating The Commons as a "grandfathered use" and that the ZBA finding granting said use is currently under appeal. The applicant is requesting the special permit to bring closure to the matter. He requested that the Board consider granting a conditional special permit with parking conditions such that the use would no longer be non-conforming.

Speaking on behalf of the Board, Chairman Moriarty stated that the legal process for the appeal needed to be finished with a decision rendered by the Land Court. The applicant also needed to show control of the parking spaces on a permanent basis such that every day that the Commons is open for an event the requisite parking is available. He requested that a parking plan be provided to the Board.

At this time, the Board discussed parking, traffic and public safety issues with the Howlett Street area residents relative to Howlett Street, East Common Street and Route 97 (High Street), and specifically the intersection of East Common and High. Site distance when taking a left turn onto High Street is notably compromised due to parked vehicles along the Town Common area on East Common Street. They noted their frustration that the detailed officers were not enforcing on street parking regulations. Mr. Martino stated that he was meeting with the Chief and would address their concerns. The Board members also noted these concerns.

Mr. Orlando Lopez, a direct abutter, made a formal statement in opposition to the application for a special permit for a function facility at 4 North Common, noting concerns of health hazard, general welfare and public safety, and also filed a brief in opposition with the Board.

Member Kristin Palace made the motion to continue the public hearing to the February 26, 2008 meeting at 8:30PM; seconded by Tony Penta; so voted 5-0.

Bills: The Board approved and signed the submitted bill schedule in the amount of \$94.76.

Minutes: Member Kristin Palace made the motion to approve the minutes of November 27, 2007 as amended; seconded by Tony Penta; so voted 5-0.

The meeting was adjourned at 10:30 PM

Respectively submitted,

Roberta M. Knight
Community Development Coordinator

